

III. REMARKS

1. Claims 1-17 remain in the application. Claims 1 and 9-17 have been amended.
2. Claims 1, 9, and 17 have been amended to recite “entirely forming messages from the information to be transmitted without using information from other layers” in order to overcome the 35 USC 112, second paragraph rejection.
3. Claims 1-3, 5, 6, 8-11, 13, 14, 16, and 17 are not anticipated by Gleeson et al. (US 5,627,829, “Gleeson”) under 35 USC 102(b).

Gleeson fails to disclose or suggest

entirely forming messages from the information to be transmitted without using information from other layers, by an application layer of a protocol stack of the first data transmission device, said entirely formed messages being different from said information to be transmitted,

as recited by claims 1, 9, and 17.

Gleeson does not use an application layer to entirely form messages without using information from other layers.

Column 6, lines 47-56 of Gleeson, cited in the present action describes a protocol stack in which selected data processing operations are performed in each layer and the layers communicate via standard protocols. The first layer is an application layer which handles protocols and interface information that directly communicate with a client application program. However, Gleeson fails to disclose or suggest that the application layer entirely forms messages without using information from other layers.

In Gleeson the application layer only passes information to the lower level. The lower levels then add level-specific details to the information. The present claims are different because messages are entirely formed in the application layer without using information from other layers, by the application layer.

At least for these reasons, Applicants submit that Gleeson does not anticipate independent claims 1, 9, and 17 and dependent claims 2, 3, 5, 6, 8, 10, 11, 13, 14, and 16.

4. Applicants respectfully submit that claims 4 and 12 are patentable over the combination of Gleeson in view of Bhagwat et al. (US 6,721,805, "Bhagwat") under 35 USC 103(a).

Claims 4 and 12 depend from claims 1 and 9, respectively.

As argued above, Gleeson fails to disclose or suggest entirely forming messages from the information to be transmitted without using information from other layers, by an application layer of a protocol stack of the first data transmission device, said entirely formed messages being different from said information to be transmitted, as recited by claims 1 and 9.

There is no disclosure in Bhagwat related to this feature. In Bhagwat, applications designed to utilize a dedicated point to point link are provided with the ability to use a shared communication medium. There is nothing related to an application layer that entirely forms messages without using information from other layers.

5. Applicants respectfully submit that claims 7 and 15 are patentable over Gleeson in view of Official Notice under 35 USC 103(a). Applicants respectfully submit that more than Official Notice is required in combination with Gleeson. Applicants refer to MPEP 2144.03 (A), second paragraph:

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) ("[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory."); *In re Eynde*, 480 F.2d 1364, 1370,

178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.").

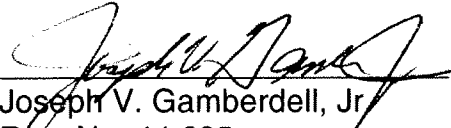
Gleeson uses the network and modem specific radio modem protocol "RM" for transmitting data. Applicants submit that RM and WAP do not perform the same function and substituting one for the other are not functionally equivalent. WAP is not a protocol specific to a modem model. Further, WAP protocol is not used for transmitting data. Utilizing WAP in place of RM would render Gleeson unsatisfactory for its intended purpose because WAP is not a radio modem protocol.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

Please charge Deposit Account No. 16-1350 \$120.00 for a one (1) month extension of time.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,


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